

AMENDED IN ASSEMBLY JULY 3, 2003

AMENDED IN SENATE MAY 13, 2003

AMENDED IN SENATE APRIL 28, 2003

SENATE BILL

No. 551

Introduced by Senator Speier
(Coauthor: Assembly Member Lieber)

February 20, 2003

An act to add Section 758.5 to the Insurance Code, relating to auto insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 551, as amended, Speier. Insurance: automotive repair dealers.

Existing law generally regulates insurers by, among other things, defining certain unlawful practices.

This bill would prohibit an insurer from ~~recommending~~ *requiring* that an automobile be repaired, ~~or not be repaired~~, at a specific automotive repair dealer, as defined, ~~unless the claimant specifically requests a referral~~. *It would also place specified restrictions on an insurer's ability to recommend or suggest an automotive repair dealer. The bill would require, if the insured chooses the repair dealer, that the insurer pay for repairs to be made in a workmanlike manner, and in no less time than if the automobile was repaired at the repair dealer recommended by the insurer, and would prohibit the insurer from limiting or discounting the reasonable repair costs based on the charges that would have been incurred at the insurer's chosen repair dealer. It would make an insurer who violates this prohibition these provisions liable for compensatory damages suffered by an insured or other claimant, or a repair dealer civil penalties.*

The bill would grant the Insurance Commissioner specified powers to enforce these provisions, and would require the commissioner to adopt regulations to implement them.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known as the “Auto Repair
2 Consumer Choice Act of 2003.”

3 SEC. 2. The Legislature finds and declares the following:

4 (a) Thousands of California consumers each year require repair
5 of their vehicles as a result of collision or other damage.

6 (b) As a result of automobile collisions and other damage,
7 many consumers make insurance claims.

8 (c) California consumers are entitled to select an auto repair
9 shop of their choice to repair auto damage.

10 ~~(d) Insurers are steering consumers to auto repair shops chosen~~
11 ~~by the insurer and not the consumer.~~

12 ~~(e) Insurers are using unfair tactics to steer consumers,~~
13 ~~including suggesting or implying that the auto repair shop selected~~
14 ~~by the consumer is inferior or inconvenient.~~

15 ~~(f)~~

16 (d) Existing laws regulating the consumer’s right to choose an
17 auto repair shop are weak.

18 ~~(g)~~

19 (e) Accordingly, the Legislature has determined that it is
20 necessary to strengthen the existing auto repair consumer choice
21 laws.

22 SEC. 3. Section 758.5 is added to the Insurance Code, to read:

23 758.5. (a) It is unlawful for an insurer, including an affiliate
24 or subsidiary of an insurer or a third party acting on the insurer’s
25 behalf, in connection with a claim, to ~~direct, suggest, or~~
26 ~~recommend that an automobile be repaired, or not be repaired, at~~
27 *require that an automobile be repaired at* a specific automotive
28 repair dealer, as defined in subdivision (a) of Section 9880.1 of the
29 Business and Professions Code, ~~unless the insured or other~~
30 ~~claimant specifically requests a referral from the insurer.~~

31 ~~(b) An insurer that violates this section shall be liable for~~
32 ~~compensatory damages suffered by the insured or other claimant,~~

1 ~~or by the automotive repair dealer, or to suggest or imply that the~~
2 ~~automotive repair dealer identified and chosen by the insured or~~
3 ~~claimant is inferior or inconvenient.~~

4 (b) It is unlawful for an insurer, including an affiliate or
5 subsidiary of an insurer or a third party acting on the insurer's
6 behalf, in connection with a claim, to require, direct, suggest, or
7 recommend any of the following:

8 (1) That an automobile not be repaired at a specific automotive
9 repair dealer.

10 (2) That an automobile be repaired at a specific automotive
11 repair dealer after the insured or claimant identifies and chooses
12 an automotive repair dealer.

13 (c) It is unlawful for an insurer, including an affiliate or
14 subsidiary of an insurer or a third party acting on the insurer's
15 behalf, in connection with a claim, to suggest or recommend that
16 an automobile be repaired at a specific automotive repair dealer,
17 unless one of the following conditions exists:

18 (1) The suggestion or recommendation of an automotive repair
19 dealer is expressly requested by the insured or claimant and the
20 insurer complies with paragraph (2).

21 (2) The insured or claimant has been informed in writing of the
22 right to select the automotive repair dealer. If the recommendation
23 of the automotive repair dealer is made orally, the insurer shall
24 provide the statement contained in this paragraph to the insured
25 or claimant at the time the recommendation is made. The insurer
26 shall send the written notice required by this paragraph within five
27 calendar days from the oral recommendation. The written notice
28 required by this paragraph shall include the following statement
29 plainly printed in no less than 10-point type:

30
31 "WE ARE PROHIBITED BY LAW FROM REQUIRING THAT
32 REPAIRS BE MADE AT A SPECIFIC REPAIR SHOP. YOU ARE
33 ENTITLED TO SELECT THE SHOP TO REPAIR DAMAGE
34 COVERED BY US. WE HAVE RECOMMENDED A REPAIR
35 SHOP THAT WILL REPAIR YOUR DAMAGED VEHICLE. AS
36 YOU HAVE AGREED TO USE OUR RECOMMENDED REPAIR
37 SHOP, WE WILL CAUSE THE DAMAGED VEHICLE TO BE
38 RESTORED TO ITS CONDITION PRIOR TO THE LOSS AT NO
39 ADDITIONAL COST TO YOU OTHER THAN AS STATED IN
40 THE INSURANCE POLICY OR AS OTHERWISE ALLOWED BY

1 *LAW. IF YOU EXPERIENCE A PROBLEM WITH THE REPAIR*
2 *OF YOUR VEHICLE, PLEASE CONTACT US IMMEDIATELY*
3 *FOR ASSISTANCE.”*

4

5 *(d) If an insured or claimant chooses to have the damaged*
6 *automobile repaired at the automotive repair dealer recommended*
7 *by the insurer, the insurer shall cause the damaged vehicle to be*
8 *restored to its condition prior to the loss at no additional cost to*
9 *the insured or claimant, other than a deductible, if applicable.*

10 *(e) If the insured or claimant elects to have the automobile*
11 *repaired at the automotive repair dealer of his or her choice, the*
12 *insurer shall pay an amount that will allow for repairs to be made*
13 *in a workmanlike manner, and in no less time than if the automobile*
14 *was repaired at the automotive repair dealer recommended by the*
15 *insurer, less any applicable deductible.*

16 *(f) If the insured or claimant elects to have the vehicle repaired*
17 *at the automotive repair dealer of his or her choice, the insurer*
18 *shall not limit or discount the reasonable repair costs based on the*
19 *charges that would have been incurred had the vehicle been*
20 *repaired by the insurer’s chosen automotive repair dealer.*

21 *(g) An insurer shall not issue or deliver an insurance policy in*
22 *this state unless the policy provisions are consistent with or more*
23 *favorable to the insured than the provisions of this section.*

24 *(h) The powers of the commissioner to enforce this section shall*
25 *include those granted in Article 6.5 (commencing with Section*
26 *790) of Chapter 1 of Part 2 of Division 1. Any person who violates*
27 *this section shall be deemed to have violated that article, and shall*
28 *be liable to the state for a civil penalty to be fixed by the*
29 *commissioner pursuant to Sections 790.035 and 790.05.*

30 *(i) The commissioner shall promulgate regulations to*
31 *implement this section.*

32 *(j) Upon the effective date of this section, the commissioner*
33 *shall notify insurers in writing of the provisions of this section.*

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